

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF OKLAHOMA**

JOHNATHAN OLIVE,	)	
an individual,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. CIV-12-412-JHP
	)	
BOARD OF COUNTY COMMISSIONERS	)	
OF BRYAN COUNTY, OKLAHOMA;	)	
KEN GOLDEN, THE SHERIFF OF	)	
BRYAN COUNTY IN HIS OFFICIAL	)	
CAPACITY; and ADVANCED	)	
CORRECTIONAL HEALTHCARE, INC.,	)	
	)	
Defendants.	)	

**FINDINGS AND RECOMMENDATION**

This matter comes before this Court on the Motion to Dismiss filed by Defendant Advanced Correctional Healthcare, Inc. (Docket Entry #50). By Order entered August 21, 2013, United States District Judge James H. Payne, the judge presiding over this case, referred the subject Motion to the undersigned for the purpose of entering Findings and a Recommendation as to its final disposition. Defendant Advanced Correctional Healthcare, Inc. ("ACH") contends that the negligence cause of action alleged against it in Plaintiff's Amended Complaint is barred by the one year statute of limitations set forth at Okla. Stat. tit. 12 § 95(A)(11) and, therefore, subject to dismissal under Fed. R. Civ. P. 12(b)(6).

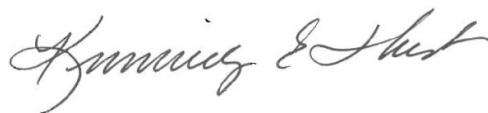
Subsequently, ACH also filed a motion for summary judgment which subsumes the same statute of limitations argument contained in its motion to dismiss. Because the argument necessarily

involves the consideration of evidentiary materials outside of the original pleadings, this Court recommends that the issue be considered as a part of the already filed summary judgment motion. Fed. R. Civ. P. 56(d). ACH's summary judgment motion directly addresses this issue and has also been referred to the undersigned by Judge Payne and is at issue for consideration.

BASED UPON THE FOREGOING, IT IS THE RECOMMENDATION OF THE UNDERSIGNED that Defendant Advanced Correctional Healthcare, Inc.'s Motion to Dismiss (Docket Entry #50) be deemed **MOOT**, and that the statute of limitations issue be addressed as a part of ACH's pending motion for summary judgment.

The parties are herewith given fourteen (14) days from the date of the service of these Findings and Recommendation to file with the Clerk of the court any objections, with supporting brief. Failure to object to the Findings and Recommendation within fourteen (14) days will preclude appellate review of the findings made herein.

IT IS SO ENTERED this 13th day of March, 2014.

A handwritten signature in cursive script, appearing to read "Kimberly E. West", written in dark ink.

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KIMBERLY E. WEST  
UNITED STATES MAGISTRATE JUDGE